



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2014-0704; FRL-9933-62-Region 5]**

**Air Plan Approval; Wisconsin; Infrastructure SIP Requirements  
for the 2008 Ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve some elements of state implementation plan (SIP) submissions from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), and 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with this final action was published on April 20, 2015, and EPA received no comments during the comment period, which ended on May 20, 2015.

**DATES:** This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2014-0704. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, [svingen.eric@epa.gov](mailto:svingen.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?

II. What action is EPA taking?

III. Statutory and Executive Order Reviews.

**I. What is the background of these SIP submissions?**

**A. What state submissions does this rulemaking address?**

This rulemaking addresses June 20, 2013, submissions and a January 28, 2015, clarification from the Wisconsin Department of Natural Resources (WDNR) intended to address all applicable infrastructure requirements for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

**B. Why did the state make these SIP submissions?**

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA has highlighted this statutory requirement in multiple guidance documents. The most recent, entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and (2)", was published on September 13, 2013.

**C. What is the scope of this rulemaking?**

EPA is acting upon the SIP submissions from Wisconsin that address the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS. The requirement for states to make SIP submissions of this type arises out of CAA section 110(a)(1), which states that states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made

for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as SIP submissions that address the nonattainment planning requirements of part D and the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and "regional haze SIP" submissions required to address the visibility protection requirements of CAA section 169A.

This rulemaking will not cover three substantive areas because they are not integral to acting on a state's infrastructure SIP submissions: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public notice or without requiring further approval by EPA, that may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR

Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

## **II. What Action is EPA Taking?**

EPA is taking final action to approve most elements of submissions from Wisconsin certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the 2008 ozone, 2010 NO<sub>2</sub>, and 2010 SO<sub>2</sub> NAAQS.

The proposed rulemaking associated with this final action was published on April 20, 2015 (75 FR 21685), and EPA received no comments during the comment period, which ended on May 20, 2015. EPA is therefore taking final action to approve, as proposed, most elements of Wisconsin's submissions.

EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Ozone	2010 NO <sub>2</sub>	2010 SO <sub>2</sub>
(A) - Emission limits and other control measures.	A	A	A
(B) - Ambient air quality monitoring/data system.	A	A	A
(C)1 - Program for enforcement of control measures.	A	A	A
(C)2 - PSD.	NA	NA	NA
(D)1 - I Prong 1: Interstate transport - significant contribution.	NA	A	NA
(D)2 - I Prong 2: Interstate transport - interfere with maintenance.	NA	A	NA
(D)3 - II Prong 3: Interstate transport - prevention of significant deterioration.	NA	NA	NA
(D)4 - II Prong 4: Interstate transport - protect visibility.	A	A	A
(D)5 - Interstate and international pollution abatement.	A	A	A
(E)1 - Adequate resources.	A	A	A
(E)2 - State board requirements.	NA	NA	NA
(F) - Stationary source monitoring system.	A	A	A
(G) - Emergency power.	A	A	A
(H) - Future SIP revisions.	A	A	A
(I) - Nonattainment planning requirements of part D.	NA	NA	NA
(J)1 - Consultation with government officials.	A	A	A
(J)2 - Public notification.	A	A	A
(J)3 - PSD.	NA	NA	NA
(J)4 - Visibility protection.	A	A	A
(K) - Air quality modeling/data.	A	A	A
(L) - Permitting fees.	A	A	A
(M) - Consultation and participation by affected local entities.	A	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking

### III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);



- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act

of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Reporting and recordkeeping  
requirements, Sulfur oxides.

Dated: August 27, 2015.

Susan Hedman,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.2591 is amended by adding paragraphs (g), (h), and (i) to read as follows:

**§ 52.2591 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(g) Approval — In a June 20, 2013, submission with a January 28, 2015, clarification, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2008 ozone NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C), (D)(i)(II), and (J), the transport provisions in section 110(a)(2)(D)(i)(I), and the state board requirements of (E)(ii). We will address these requirements in a separate action.

(h) Approval — In a June 20, 2013, submission with a January 28, 2015, clarification, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010

nitrogen dioxide (NO<sub>2</sub>) NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C), (D)(i)(II), and (J), and the state board requirements of (E)(ii). We will address these requirements in a separate action.

(i) Approval — In a June 20, 2013, submission with a January 28, 2015, clarification, Wisconsin certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2010 sulfur dioxide (SO<sub>2</sub>) NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C), (D)(i)(II), and (J), the transport provisions in section 110(a)(2)(D)(i)(I), and the state board requirements of (E)(ii). We will address these requirements in a separate action.

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